

# UNITED STATES DISTRICT COURT

for the  
EASTERN DISTRICT OF WISCONSIN

*In the Matter of the Search of*

A USPS Priority Mail Small Flat Rate Box with Signature Tracking # 9410 8112 0108 0964 9839 89 addressed to "Jesse Bierman, 429 High St., Birnamwood WI 54414-9244" and containing the return address "N B Tween Inc., 22136 Westheimer Pkwy #717, Katy TX 77450."

Case Number: 13 m 624

USDC EDWI FILED IN GREEN BAY DIV  MAY - 6 2013  AT _____ O'CLOCK _____ M JON W. SANFILIPPO
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## APPLICATION & AFFIDAVIT FOR SEARCH WARRANT

I, Matt Schmitz, a federal law enforcement officer, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

A USPS Priority Mail Small Flat Rate Box with Signature Tracking # 9410 8112 0108 0964 9839 89 addressed to "Jesse Bierman, 429 High St., Birnamwood WI 54414-9244" and containing the return address "N B Tween Inc., 22136 Westheimer Pkwy #717, Katy TX 77450."

currently located in the Eastern District of Wisconsin there is now concealed: **Please see attached affidavit, which is hereby incorporated by reference.**

The basis for the search warrant under Fed. R. Crim. P. 41(c) is which is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of a crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Title 21, United States Code, Sections 841(a)(1), 843(b), and 844.

The application is based on these facts:

- ☒ Continued on the attached sheet, which is incorporated by reference.
- ☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Sworn to before me, and signed in my presence.

Date MAY 6, 2013

City and state: Green Bay, Wisconsin

Applicant's signature  
Name and Title: Matt Schmitz, U.S. Postal Inspector

Judge's signature  
THE HONORABLE JAMES R SICKEL  
United States Magistrate Judge  
Name & Title of Judicial Officer

## AFFIDAVIT

Matt Schmitz, United States Postal Inspector, being duly sworn, states the following information was developed from his personal knowledge and from information furnished to him by other law enforcement agents and professional contacts:

### I. INTRODUCTION

1. I have been employed by the United States Postal Inspection Service for approximately nine years and was previously employed as a Police Officer with the City of Middleton (WI) and City of Janesville (WI) Police Departments for a total of six years. As part of my duties as a Postal Inspector, I investigate the use of the U. S. Mails to illegally send and receive controlled substances and drug trafficking instrumentalities. I have participated in investigations which have resulted in the arrest of individuals who have received and distributed controlled substances using the U.S. Mail, as well as the seizure of the illegal drugs and proceeds from the sale of those illegal drugs. My training and experience includes identifying packages with characteristics indicative of criminal activity, namely, the distribution of controlled substances.
2. This affidavit is submitted in support of an application for a search warrant for a 5.5 inch by 8.5 inch by 1.75 Priority Mail Small Flat Rate Box with Signature Tracking # 9410 8112 0108 0964 9839 89, mailed on April 30, 2013, from Alief, TX 77411. The mailing is addressed to "Jessie Bierman, 429 High St., Birnamwood WI 54414-9244" and contains the return address, "N B Tween Inc., 22136 Westheimer Pkwy #717, Katy TX 77450." The parcel weighs approximately 3 ounces and bears \$7.35 in postage.

### II. BACKGROUND

3. Recently, some individuals in the United States have begun to buy, sell, and/or ingest what is referred to as "bath salts." Many of these items are sold over the internet and in local retail shops

and are marketed as novelty items that are not to be used for human consumption. Bath salts are Central Nervous System stimulants and have no real value as a bath salt or other bath product. Through my experience in conducting investigations involving the possession and use of bath salts, I have learned that they are consumed by users intravenously, snorted, or smoked. Bath salt users generally report physical effects similar to methamphetamine and cocaine and adverse effects including paranoia, delusions, panic attacks, and psychotic episodes. I have also learned through my experience with investigations concerning bath salts that entities selling bath salts intentionally mislabel the "bath salt" and its chemical composition to evade detection by law enforcement. Also, these "bath salts" are often labeled "not intended for human consumption" in an attempt to circumvent federal and state controlled substance laws. Generally, bath salts are sold in half-gram or gram quantities.

4. In 1986, Congress established federal prohibitions against trafficking in controlled substance analogues by amending the Controlled Substances Act, 21 U.S.C. 801-971. The result was the Controlled Substance Analogue Enforcement Act of 1986 (CSAEA) which was designed to address "underground chemists who tinker with the molecular structure of controlled substances to create new drugs that are not scheduled." These new drugs are referred to as controlled substance analogues. New designer drugs are often created as alternatives to known illegal drugs because they may be marketed as being legal. The Controlled Substance Analogue Enforcement Act's purpose is to prevent the development of new drugs that are not scheduled, provide elasticity and prevent a specific listing of chemical analogues. *United States v. Klecker*, 348 F.3d 69 (4<sup>th</sup> Cir. 2003). Under the CSAEA, a controlled substance analogues is a substance:
  - a. the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II;
  - b. which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or

hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

- c. with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II. In other words, evidence must exist to show that the analogue was consumed by a person or was intended to be consumed by a person.
5. On October 21, 2011, the Drug Enforcement Administration (DEA) issued a final order to temporarily schedule three synthetic cathinones under the Controlled Substances Act (CSA). These substances are Mephedrone (4-methyl-N-methylcathinone), Methyldone (3,4-methylenedioxy-N-methylcathinone) and MDPV (3,4-methylenedioxypyrovalerone). This action was based on a finding by the DEA Administrator that the placement of these synthetic cathinones and their salts, isomers, and salts of isomers into Schedule I of the CSA was necessary to avoid an imminent hazard to public safety. As a result, the full effect of the CSA and its implementing regulations including criminal, civil, and administrative penalties, sanctions and regulatory controls of Schedule I substances, will be imposed on the manufacture, distribution, possession, importation, and exportation of these synthetic cathinones.
6. During the course of this investigation I learned the following through a review of information produced by the Drug Enforcement Administration (DEA), the DEA's Chemical Evaluation Section, and through various sources on the internet:
- a. Butylone: In approximately February, 2012, The DEA's Drug and Chemical Evaluation Section determined butylone is substantially similar in chemical structure to the Schedule I controlled substance methylone and that butylone is expected to have a substantially similar

effect on the Central Nervous System as that of methylone. When I queried Butylone on the internet I received information from several sources which identified Butylone as a derivative of MBDB, a drug which has been identified in bath salts.

- b. Pentylone: In approximately February, 2012, the DEA's Drug and Chemical Evaluation Section determined pentylone is substantially similar in chemical structure to the Schedule I controlled substance methylone and that pentylone is expected to have a substantially similar effect on the Central Nervous System as that of methylone.
- c. α-PVP: In approximately December, 2011, the DEA's Drug and Chemical Evaluation Section determined α-PVP is substantially similar in chemical structure to the Schedule I hallucinogen methylenedioxypyrovalerone (MDPV) and that α-PVP and MDPV are expected to share substantially similar pharmacological effects.

### III. INVESTIGATION

- 7. On April 15, 2013, Shawano County Sheriff's Detective Keith Sorlie told me the Shawano County Sheriff's Department had received information from a confidential source (CS) on or about the morning of April 15, 2013, that Jessie Bierman of 429 High St in Birnamwood, WI, was receiving "bath salts" via the US Mail. CS told the Shawano County Sheriff's Department that they were living with Bierman at 429 High St in Birnamwood and that Bierman orders the bath salts from Poland via the internet and has them sent through the US Mail to a PO Box Bierman uses in Birnamwood, WI. CS also reported that Bierman gives them bath salts to ingest and that CS has ingested these bath salts.
- 8. On April 15, 2013, I contacted the Wittenberg, WI Post Office regarding the above reported information. The Postmaster who supervises the Birnamwood delivery area is located at the Wittenberg Post Office and, therefore, information on individuals receiving mail in the Birnamwood

area would be held at the Wittenberg Post Office. I instructed the Wittenberg Post Office to contact me if a parcel addressed the Jesse Bierman arrived for delivery to his address in Birnamwood, WI. I learned from the Wittenberg Post Office that Bierman is known to occupy 429 High St, Birnamwood, WI, but receives his mail in PO Box 31 in Birnamwood, WI. I know from my knowledge of USPS operations that the U.S. Postal Service requires residents living in some small towns to receive their mail in a PO Box at the local Post Office rather than have their mail delivered to their street address. I also know that if a resident of a small town who regularly receives mail in a PO Box were to have a mailing addressed to them at their street address, the Post Office would deliver the mailing to their assigned PO Box and would not deliver it to their physical street address.

9. On April 25, 2013, I received information from the Wittenberg Post Office that they had received for delivery a Priority Mail Flat Rate Box addressed to "Jesse Bierman, 429 High St, Birnamwood, WI 54414" with a delivery address of "N B Tween Inc, 22136 Westheimer Pkwy #717, Katy TX 77450." I researched the return address "N B Tween Inc, 22136 Westheimer Pkwy #717, Katy TX 77450" using the internet and saw from a Google search that the website "corporationwiki" listed the Principal of "N B Tween Inc" as Trieu Duong and Director as Trieu Duong. I recognized the name "Trieu Duong" and recalled that this name was associated with a bath salt investigation I conducted in or about October and November, 2012, in the Eastern District of Wisconsin. In that investigation I developed information that a female in Antigo, WI, was suspected of receiving bath salts via the US Mail. Specifically, I learned that this female was receiving parcels that contained the return address, "US Jewel Supply, P.O. Box 1989, Alief Tx 77411." I had learned from my contact with the Alief, TX Post Office on October 10, 2012, that P.O. Box 1989 was rented and used by an individual they knew as Trieu Duong and that Duong had recently reported to them that she had been contacted by US Postal Inspectors regarding items she was mailing under the name US Jewel Supply. On October 10, 2012, during my investigation of US Jewel Supply, I learned from a query of the internet that Trieu Duong was listed as the administrator of the website,

"tranduongimports.com." On October 10, 2012, I queried "tranduongimports.com" and was taken to a website on which the first page read:

"Thank you for choosing TDimports.com to purchase your research chemicals. Rest assured you will receive the highest quality chemicals when you buy from us. Your order will ship promptly (same day if possible). This is your one stop to buy A-pvp, buy MXE, buy 4-emc, buy 4-fa buy pentylone and buy butylone.

**WE ONLY SHIP TO BILLING ADDRESS**

Please note that you will be billed from usjewelsupply. usjewelsupply will be what shown on your statement. Also all package will be ship with US Jewel Supply as the return address.

We are currently offering free shipping on all orders.

1 and 5 gram orders are shipped 1<sup>st</sup> class mail with delivery confirmation.

\$200, 10 gram, 20 gram, 50 gram order will be ship with signature confirmation.

We are now offering the option to upgrade your 1 and 5 gram order to Priority Mail for only \$4.90 and Express Mail for \$18.95 for all orders."

During a review of the front page of this website I also saw a section labeled "Research Chemicals" which contained icons labeled "Buy 4-EMC Research Chemicals, Buy a-PVP Research Chemicals, Buy Butylone Research Chemicals, Buy MXE Research Chemicals, Buy Pentylone Research Chemicals, and Buy 4-FMA Research Chemicals." After identifying this website I researched the above "Research Chemicals" and located information provided by the Drug Enforcement Administration regarding the identification of some of these substances as analogues of Schedule I controlled substances (see paragraph 6 of this affidavit). I know from my experience in the investigation of "bath salts" that entities selling "bath salts" often label the substances as "plant food", "bath salts", or "research chemicals" in an attempt to legitimize their use and disguise their knowledge that the substances are being purchased for the purpose of being ingested.

10. On November 16, 2012, I executed a federal search warrant issued in the Eastern District of WI under case number 12-M-710 on a parcel related to the investigation of "US Jewel Supply" as described in paragraph 9 of this affidavit. During this search I found the package containing the return address of "US Jewel Supply, PO Box 1989, Alief Tx 77411," and mailed to an individual in Antigo, WI contained a cream colored powder packaged in two (2) separate plastic bags that were both labeled "APVP," with the outer plastic bag also containing the label "Warning Toxic, Not for Human Consumption." The substance in both bags was tested by the US Drug Enforcement Agency laboratory in Chicago, IL in December, 2012, and found to contain the active ingredient "alpha-pyrrolidinopentiophenone," also known as  $\alpha$ -PVP. During my investigation of US Jewel Supply I contacted the US Postal Inspection Service office in Houston, TX to refer the information I had learned in the event they wished to initiate an investigation.
  
11. On or about April 25, 2013, I contacted the U.S. Postal Inspection Service in Houston, TX, for additional information on US Jewel Supply and "Trieu Duong." I learned from Postal Inspectors in Houston, TX that Trieu Duong had discontinued operating under the business name "US Jewel Supply" and was now operating through the website, "rc4u.co." On April 25, 2013, I queried the web address "rc4u.co" and was directed to a website whose first page identified the company "rc4u" sold "research chemicals." Specifically, the first page of this website read, in part:

"These products are for laboratory research only. NOT for administration to humans. NOT for human or veterinary diagnostic or therapeutic use. Harmful if ingested. Keep out of reach of children and animals.....Thank you for choosing RC4u.co to purchase your research chemicals. Rest assured you will receive the highest quality chemicals when you buy from us....NOTE: We only sell through referrals, if you never purchase from us before please email us with your referrals before putting in your order. Thank you.....We only ship priority so please DON'T ask us to ship express we will not ship express."




I also saw that this website advertised they sold the research chemicals, "4-EMC" and "α-PVP." I queried the research chemicals this website offered for sale and was directed to a page showing they sold 1, 5, 10, and 20 gram quantities of 4-EMC and α-PVP for \$35.00, \$130.00, \$207.00, and \$367.00, respectively. I also queried a page on this website that was labeled "About RC4U Research Chemicals" and saw it read, in part, "We supply products nationwide to researchers, major clinical diagnostic labs, research institutions, and universities." Finally, I queried a page on this website labeled "Terms and Conditions" and read, in part, "Your credit card will be charged with the name: US Jewel supply."

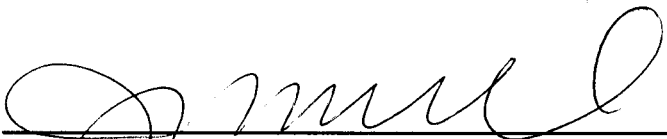
12. On May 3, 2012, I received information from the Wittenberg Post Office that a second Priority Mail Small Flat Rate parcel had arrived for delivery to "Jessie Bierman, 429 High St., Birnamwood, WI 54414" with the return address, "N B Tween Inc, 22136 Westheimer Pkwy #717, Katy TX 77450." I directed the Wittenberg Post Office to send me this parcel for further investigation. On May 6, 2013, I received this parcel at the US Postal Inspection Service office in Oneida, WI and saw it was addressed to "Jessie Bierman, 429 High St., Birnamwood, WI 54414" with a return address of "N B Tween Inc, 22136 Westheimer Pkwy #717, Katy TX 77450" and Signature Tracking # 9410 8112 0108 0964 9839 89. I noticed the size of the box was consistent in size to a parcel containing a typical amount of bath salts. I know from my investigative experience that individuals who receive bath salts via the US Mail commonly receive them in quantities of one or more grams.

13. Postal Regulation Sec. 274.31 of the United States Postal Service Administrative Support Manual states that no one may detain mail sealed against inspection, except under the following condition: A Postal Inspector acting diligently and without avoidable delay, upon reasonable suspicion, for a brief period of time, to assemble evidence sufficient to satisfy the probable cause requirement for a search warrant issued by a Federal Court.

14. For these reasons there is probable cause to believe that Priority Mail Small Flat Rate Box with Signature Tracking # 9410 8112 0108 0964 9839 89 contains controlled substances and/or controlled substance paraphernalia. I am seeking the issuance of a warrant to search this parcel, and the contents contained therein, for contraband and evidence of a crime, namely, possession and possession with the intent to distribute controlled substances, and use of the mails to commit a controlled substance felony, in violation of Title 21, United States Code, Sections 841(a)(1), 843(b), and 844.

  
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Matt Schmitz  
U.S. Postal Inspector

Subscribed and sworn to before me this 6 day of May, 2013.

  
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The Honorable James R. Sickel  
United States Magistrate Judge  
Eastern District of Wisconsin